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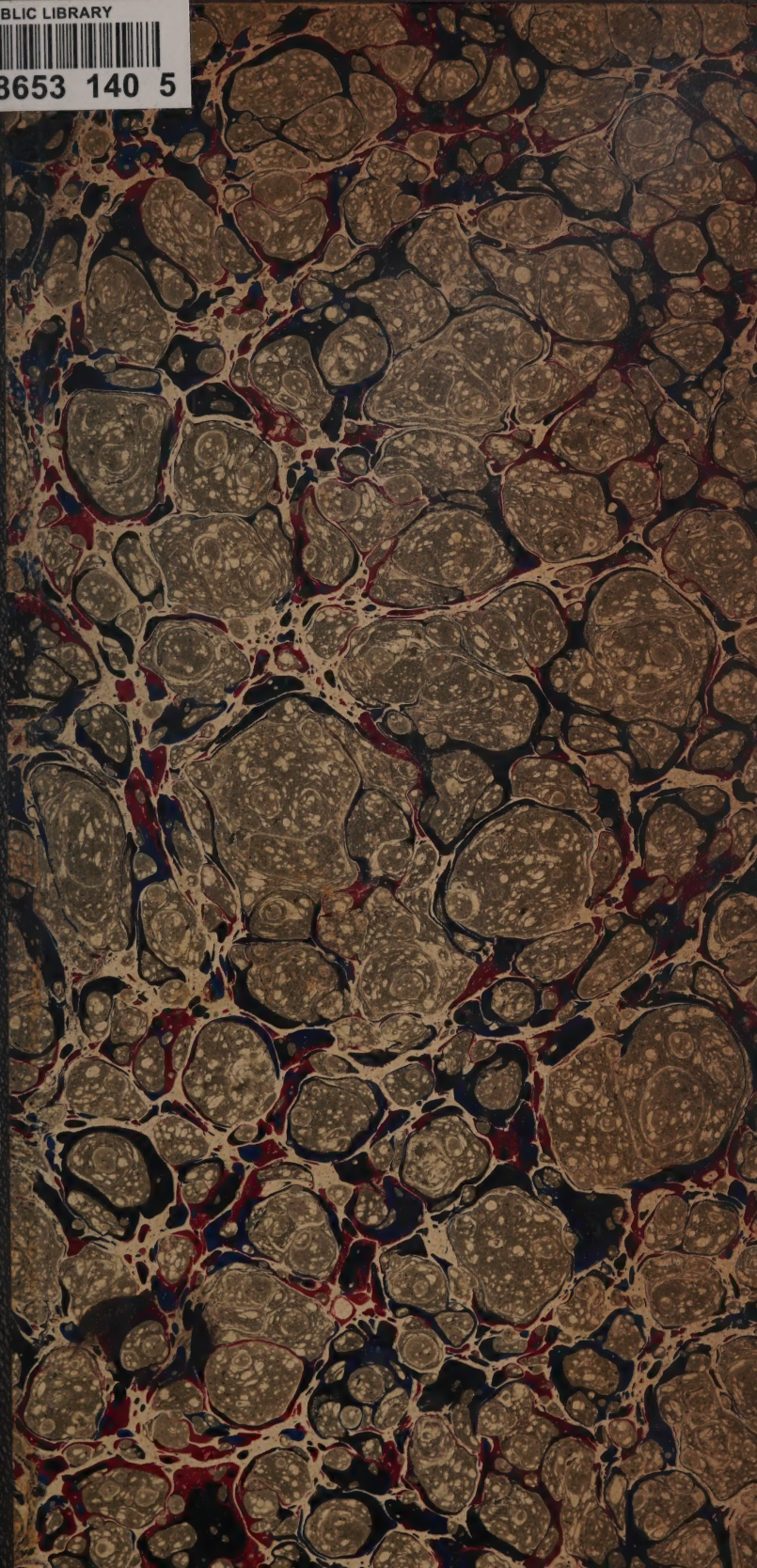

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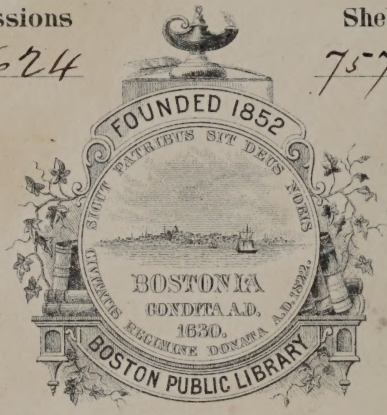

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Dr. S. A. Green.
July 18 1891

Heliotype Printing Co. Boston

Pph covers

Limitation of
Hours of Tour-workers in Paper Mills.

ARGUMENT

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FOR

REMONSTRANTS.

JOHN T. WHEELWRIGHT,
Of Counsel.

BOSTON:
BABB & STEPHENS, PRINTERS,
136 CONGRESS STREET.
1891.

(26624)
Dr. S. A. Green
July 18/91

HOURS OF TOUR-WORKERS IN PAPER MILLS.

The petitioners, tour-workers in paper mills, pray that their hours of labor be regulated so that they shall begin work on Monday morning at seven (7) o'clock A. M., and stop work at ten (10) o'clock P. M., on Saturday night, in place of beginning at twelve (12) o'clock on Sunday night, and stopping at twelve (12) o'clock on Saturday night.

I. TOUR-WORKERS DEFINED.

Tour-workers are the laborers who keep the engines and paper machines of a paper mill in continuous operation during the secular days of the week, and are but a small proportion of the total number of hands employed in a mill.

They are the machine tenders and assistant machine tenders; (pulp and rag) engineers and assistant engineers, and boiler tenders. For many years it has been customary in all parts of this country to run the machinery of paper mills continuously during the week; and it is admitted to be necessary for the successful operation of paper mills that the machinery be run continuously, so far as is possible. Most of the workmen and women in paper mills are day-workers laboring the same hours as work-people in other factories; but longer hours are necessarily required of the tour-workers, as will appear hereafter.

WAGES OF TOUR-WORKERS.

For these longer hours, these workmen receive proportionate compensation; and the petitioners admit that they are content with their wages. Inquiries among sixteen firms and corporations engaged in paper manufacturing in Massachusetts show that machine tenders receive from $2.50 to $3.00 a day; assistant machine tenders from $1.25 to $2.00; engineers, $1.75, and in some cases in writing mills, $2.50; assistant engineers, $1.25 to $2.00; and boiler tenders from $1.50 to $2.25. The assistants at the machines and engines are usually young men, learning their trade, and their wages are more or less dependent on length of time they have served.

HOURS OF LABOR.

It is true that the machinery in paper mills is kept in motion for nearly one hundred and forty-four hours in the week, but it is not true that machine tenders or engineers individually work seventy-two hours per week.

It was conclusively shown at the hearing that the tour-workers in all mills are allowed to leave the mill for one hour during each tour for their meal, and that while they are absent from the mill they are not held in any way to be responsible for the conduct of the machinery, and their places are supplied during their absence, either by the men who work with them on the engine or machine, or from other departments of the mill.

In no case is more than one hundred and thirty-two hours of labor in two weeks required of a tour-worker, and this time is almost always shortened an hour or two on Saturdays.

The hours of tour-workers, where they work all night, and all day tours, are as follows: —

The night tour comes on at twelve o'clock Monday morning: —

DAY.	COMES ON.	QUITS.	HOURS.	MINUS.	TOTAL.
MONDAY.	12 P.M.				
MONDAY.		6.45 A.M.	6 3-4		6 3-4
MONDAY.	5.45 P.M.				
TUESDAY.		6.45 A.M.	13	1 hour	12
TUESDAY.	5.45 P.M.				
WEDNESDAY.		6.45 A.M.	13	1 hour	12
WEDNESDAY.	5.45 P.M.				
THURSDAY.		6.45 A.M.	13	1 hour	12
THURSDAY.	5.45 P.M.				
FRIDAY.		6.45 A.M.	13	1 hour	12
FRIDAY.	5.45 P.M.				
SATURDAY.		6.45 A.M.	13	1 hour	12
			71 3-4	5 hours	66 3-4

The next week, this set of workmen goes on the day tour.

The day tour comes on at 6.45 Monday morning: —

DAY.	COMES ON.	QUITS.	HOURS.	MINUS.	TOTAL.
MONDAY.	6.45 A.M.				
MONDAY.		5.45 P.M.	11	1 hour	10
TUESDAY.	6.45 A.M.				
TUESDAY.		5.45 P.M.	11	1 hour	10
WEDNESDAY.	6.45 A.M.				
WEDNESDAY.		5.45 P.M.	11	1 hour	10
THURSDAY.	6.45 A.M.				
THURSDAY.		5.45 P.M.	11	1 hour	10
FRIDAY.	6.45 A M.				
FRIDAY.		5.45 P.M.	11	1 hour	10
SATURDAY.	6.45 A.M.				
SATURDAY.		11 P.M.	16 1-4	1 hour	15 1-4
			71 1-4	6 hours	65 1-4

The next week, this set of workmen goes on the night tour.

This is not the method of distributing the hours of labor which is most satisfactory to the mill-owners. *The employees are permitted to regulate their method of distributing the hours according to their preferences.* The old method, and the one preferred by the owners, is shown in the following table : —

The night tour comes on at twelve o'clock Monday morning: —

DAY.	COMES ON.	QUITS.	HOURS.	MINUS.	TOTAL.
MONDAY.	Midnight.	Noon.	12	1 hour breakfast.	11
TUESDAY.	"	"	12	1 "	11
WEDNESDAY.	"	"	12	1 "	11
THURSDAY.	"	"	12	1 "	11
FRIDAY.	"	"	12	1 "	11
SATURDAY.	"	"	12	1 "	11
			72	6 hours breakfast	66

The next week, this set of workmen goes on the day tour.

The day tour comes on at noon Monday: —

DAY.	COMES ON.	QUITS.	HOURS.	MINUS.	TOTAL.
MONDAY.	Noon.	Midnight.	12	1 hour supper.	11
TUESDAY.	"	"	12	1 "	11
WEDNESDAY.	"	"	12	1 "	11
THURSDAY.	"	"	12	1 "	11
FRIDAY.	"	"	12	1 "	11
SATURDAY.	"	11 P.M.	11	1 "	10
			71	6 hours supper.	65

The next week, this set of workmen goes on the night tour.

The improvement in the construction of paper mills, and in the machines, has made it possible to run the machines at a greater speed than formerly, and the invention of the Jordan and other refining engines, and adoption of other devices, have facilitated the process of preparing pulp. But these changes do *not* demand a greater skill, or attention on the part of the operative, than was formerly necessary; but, really, the improvements in the engines are such that there is now less need of skill in an engineer, and the greater perfection of the paper-machines prevents breaks of the paper and consequently less labor or skill is required. The speeding of these perfected machines does not give the operatives as great anxiety of mind as they had when tending less complete and effective machines, but *it may be here noted that since* 1860 *the rate of wages paid the tour-workers has nearly doubled.*

The work of tour-workers is not one of continuous effort. If the paper machine goes ill, then the machine tenders have active and trying work; but in well-regulated mills this seldom happens.

The testimony of manufacturers at this hearing has shown conclusively that a decrease in the hours of working a paper mill will cause a proportional decrease in the product, and (proportionately) a much larger increase in the cost of production. The fixed charges cannnot be decreased; and the less paper any given mill makes, the more it costs per pound to make it.

The curtailing of the hours of labor of tour-workers will lessen the amount of labor to be done by the day-hands in paper mills, and thus the first effect would be to throw out of employment a large number of day-hands. There are *four or five times as many of these* employed in paper mills as tour-workers.

THE SUNDAYS OF TOUR-WORKERS.

The suggestion that tour-working interfered with the Sabbath was shown to be wholly without foundation. It is clear that Sunday is free to the tour-wórkers, excepting that the set going on early Monday morning require Sunday evenings for rest; but the morning and afternoon hours of service are free to all. A man, leaving work at eleven o'clock P. M., Saturday, should be able to get all the sleep he needs before church time on Sunday. It appeared by evidence at the hearing, that the men are usually out of the mills before this hour on Saturdays; and surely few in any employment get to bed much earlier on Saturday night.

I.

CONSTITUTIONALITY.

It is clear that any law forbidding the use of a paper mill during any hours of the secular week would be unconstitutional, as it would deprive the owner of the use of his property, for certain hours, without compensation. If the Legislature has the power to forbid the running of a mill for two hours on Saturday, and for seven hours on Monday, it certainly would have the right to increase the number of forbidden hours during those days, or to forbid the use of a paper mill altogether.

The police power of the State may be exercised to regulate the compensation of proprietors of ferries, hackney carriages, and turnpike roads, of common carriers, millers, bakers, wharfingers, and innkeepers, since these callings are held to be "affected with a public interest, and not *juris privati* merely."

Property affected with a public interest is property dedicated by its owner to public uses, or property the use of

which was granted by the government, or in connection with which special privileges were conferred.

Munn v. *Illinois*, 94 U. S. 113.

The State may, by *general* regulations, regulate trades unwholesome to the public, slaughter-house, operations offensive to the senses, the deposit of gunpowder, the application of steam-power to propel cars, the building with combustible material, and the burial of the dead. These regulations are only allowed so far as they are necessary for the protection of the rights of others, and to secure to them the equal use and employment of their property.

Thus a slaughter-house comes under the police regulation of the government, as its improper use may breed a pestilence; the hours of closing drinking saloons may be regulated, as late hours may be deemed to be injurious to the morals of the community.

The States have the power of prohibiting such use of property as will be prejudicial to the health, the morals, or the safety of the public.

Mugler v. *Kansas*, 123 U. S. 123.

This case supports the famous Kansas prohibitory law, which permitted the destruction of breweries and distilleries engaged in making intoxicating drinks.

But no stretch of reasoning can put a paper mill in the category with those employments which are likely to be injurious to the health or morals of the community.

That some of the workers in the paper mills wish shorter hours of labor is no reason for exercising the police power of the State to prohibit the use of paper mills during certain hours.

It is a remedy not suited to the disease, and if it be applied to the special case of certain workers in paper mills, the precedent offered would work very ill in other employments.

The conclusion is inevitable that the owner of a paper mill cannot be restrained in his use of his mill from 6 P. M. on Saturdays until 7 A. M. on Mondays, unless it is conceivable that he can be restrained by the Legislature, exercising its police power, from using his property at all, or at any time.

To prohibit the use of paper mills within certain hours of the secular week would be repugnant with that provision of the fourteenth amendment of the Federal Constitution, which declares that no State shall deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of law; and it would also be repugnant with that part of Article XII. of the Declaration of Rights reserved by the Constitution of this Commonwealth, which provides that "no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunity, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land."

II.

It has been attempted, however, in previous legislatures, to pass a law which would accomplish in a roundabout way that which it was evident could not be done directly, and a bill was brought in last year, providing that no employee in in any paper mill, who is subject to the provisions of this act, shall be employed at any time during the hours between six o'clock in the afternoon of Saturday, and seven o'clock in the morning of Monday. This act was to apply only to such employees in paper mills as are known as tour-workers, and only to such tour-workers as are so employed at any time during the hours between seven o'clock in the morning of Monday and six o'clock in the afternoon of Saturday.

The provisions of the act were not to apply to paper mills where the tour-workers labored not more than forty-eight hours in a week.

It would be a prohibition of the use of a paper mill to provide that none of the operatives essential to the conduct of the mill shall be employed between certain hours. To provide that no tour-workers who are employed in paper mills at any time during the hours between seven o'clock in the morning of Monday and six o'clock in the afternoon of Saturday shall be employed during the hours between six o'clock in the afternoon of Saturday and seven o'clock in the morning of Monday is to deprive all paper-mill owners in the State of the use of their property during this latter period of thirteen hours.

For it is obvious that no gang of men, working only thirteen hours a week, could be found to work a mill. The pay could not be enough to enable them to live in idleness during the other hours of the week. And if such a gang could be found for every mill in the State, it would be against public policy to forbid them to labor at their calling except during these hours. *They could not, under the bill, work through both of the periods.*

Last year's bill made the bill inoperative as to mills working three gangs of tour-workers.

It was evident at the hearing that the tour-workers do not desire eight-hour shifts. All seemed to shun the subject, and to declare that they had not considered it. It may be inferred that they think that the pay of tour-workers would be ultimately decreased if the work were made so light.

Certainly, if existing wages were maintained, and tour-workers labored but forty-eight hours a week, a rush into this vocation and an ultimate lowering of wages might be predicted, and it would hardly be reasonable for the State, which allows sixty hours a week of work for women and children, to compel forty-eight hours a week for grown men in a particular industry. But it is clear that by the bill last year this alternative is offered the manufacturers: **Either the prohibition of the use of their mills between these hours, or the employment of three shifts, each working eight hours.**

The Legislature would neither pass a bill prohibiting the use of the mills, nor a bill limiting the hours of tour-workers to forty-eight hours a week. Then why should it be considered advisable to pass a bill compelling one or the other alternative?

The very form of the bill is a strong argument against it. It seems hard to imagine a more indirectly stated or a more improper piece of legislation.

It picks out a small proportion of the laborers in a lesser industry for an extraordinary protection, and only a part of this class.

There should be the strongest of reasons for passing such a measure. Yet all the tour-workers at the hearing stated that they had *no cause of complaint of any kind against their employers, except that in most of the mills in Massachusetts they worked during these hours on Monday morning.*

This is their only complaint, and on this they come to the Legislature to take them under its wing.

Why should the Legislature pass by the rest of toiling humanity who work long hours, and select these few well-to-do citizens for its especial care?

The act of 1874, Chap. 221, regulated the hours of labor of all women and children working in *all* manufacturing establishments.

If the hours of labor of grown men are to be regulated by the State, an equally sweeping provision should be passed. Is is matter of common knowledge that the hours of labor in paper mills are the same as in all establishments running day and night.

In our gas-works and electric-light plants there are more of such laborers than in our paper mills.

The case of *Commonwealth* v. *Hamilton Manufacturing Co.* upheld the constitutionality of the statute of 1874, Chap. 221, which provides that "no minor under the age of eighteen years, and no woman over that age shall be employed in laboring, by any person, firm, or corporation, in

any manufacturing establishment in this Commonwealth, more than ten hours in any one day," except in certain cases, and that "in no case shall the hours of labor exceed sixty per week." The tour-workers bill proposed last year made no exceptions for necessary repairs, as was provided in the statute of 1874, and by its terms certain workers were forbidden from being "employed at any time during the hours between six o'clock in the morning of Saturday and seven o'clock in the morning of Monday.

This limits their right to labor as many hours per day or week as they may desire; and forbids their employment during hours when it may be for their interest to be employed.

It in terms forbids them from laboring in a particular business or occupation as many hours per day or per week as they may desire, and it violates their right to labor in accordance with their own judgment as to the number of hours they shall work.

The case above cited is an authority against the constitutionality of the proposed Tour-Workers' Act of last year.

III.

Besides these constitutional obstacles which stand in the way of this legislation, there are other reasons against it.

Paper making has been revolutionized by the different processes of making pulp from wood. The regions where spruce and poplar abound are the coming seats of the paper manufacture. Massachusetts has but little spruce and poplar, coal is dear here, and our water-power utilized. Our paper industry has perhaps reached its limits of growth. There are but nine wood-pulp plants in our State, while there are fifty in New York, seventeen in New Hampshire, twenty-eight in Maine, eighteen in Vermont, twenty-four in Wis-

consin. We are in no position to further handicap our mills, in the competition with other States.

It is said by those urging this legislation that the other States will fall into line as they did after the act of 1874. It took them all the way from nine years to sixteen years to follow that legislation which cared for the weaker members of society.

It will take a long while for the principle of putting grown men under guardianship to gain universal acceptance in the United States.

The New York statute of 1887, Chap. 529, to be sure, provides that

"§ 1. Ten hours' labor to be performed within twelve consecutive hours, with reasonable time for meals, shall constitute a day's labor in the operation of all street surface and elevated railroads owned or operated by corporations incorcorporated under the laws of this State, whose main line of travel, or whose routes lie principally within the corporate limits of cities of more than 100,000 inhabitants, whatever motive power may be used in the operation of such railroads.

"§ 2. It shall be a misdemeanor for any officer or agent of any such corporation to *exact* from any of its employees more than ten hours' labor, the same to be performed within twelve consecutive hours, with not less than one-half hour for dinner, constituting a day, provided, however, that in cases of accident or unavoidable delay, extra labor may be permitted for extra compensation."

But it will be observed that this applies to corporations which have valuable public franchises and are subject to no competition, and that it is possible for the laborer to work as many hours as he pleases. The company is punished if it *exacts* more hours. If the laborer works willingly there is no penalty. He is left free to work as much as he chooses.

This New York statute, then, is no precedent for the Tour-Workers' Bill.

IV.

The statute of 1874, Chap. 221, has been approved, because it deals with persons who have not the strength or ability to protect themselves by organization, and who, therefore, may well be put under the protection of the State. But a distinction has always been drawn between legislation regulating the employment of women and children and legislation which should regulate the employment of male adults. These last form the State, in a democracy, and are its bone and sinew, and are supposed to be able to look after their own interests, and not to need the surveillance of their own servants, the legislators. A body of men who obtain rights and privileges by fair personal endeavor, through self-dependence and organization, are made the stronger and better, not only by their improved condition, but by the fact that such improvement was due to themselves alone.

Mr. Vose, of Hollingsworth & Vose, and Mr. Bird, of F. W. Bird & Son, both copartnerships operating mills in East Walpole, testified that while they gave the shorter hours asked by the petitioner, they objected to be compelled to do so by law.

The reason for their objection is plain; if this reform comes by the usage of the trade, it will cause no violent change, and if, at any time, stress of circumstances demands, extra work, beneficial to employer and employee, may be done.

All admit that this reform would come better by agreements than by a law, and it was testified at the hearing that at least twelve of the leading concerns of Massachusetts worked the shorter hours.

It may be predicted that this movement, started as it is, will continue, and that the mill owners who can afford it will shorten hours, either by employing three shifts, or by shortening existing shifts. A law compelling the shorter

hours will strike with a sharp blow the mills which cannot afford the great loss it will occasion.

Mr. E. J. Hickey, of Hickey & Wilder, operating a hanging-paper mill in Middleton, Mass., testified at the hearing that his mill was running on so narrow a margin that a curtailment of the hours would necessitate his removing to another State. This mill had never been successful until it came into his hands.

We cannot believe that the Legislature of Massachusetts will pass a law to cripple and perhaps destroy a particular industry, and thus start on a course of legislation which would inevitably lead to the State being a guardian of its male citizens. No one can exactly foresee how much damage a law fettering an industry may do; but certainly no such law should be passed, except for the most convincing reasons, which have not been shown in this case.